

BYRNE GOLDENBERG & HAMILTON, PLLC

John J. Byrne, Jr.

Thomas J. Hamilton

Lloyd Goldenberg

1025 Connecticut Avenue, N.W.

Suite 1012

Washington, D.C. 20036

Telephone: (202) 857-9775

Facsimile: (202) 857-9799

BRESSLER AMERY & ROSS, P.C.

David H. Pikus

David Smitham

17 State Street

New York, New York 10004

Telephone: (212) 425-9300

Facsimile: (212) 425-9337

Attorneys for Defendant Julius H. Schoeps

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE MUSEUM OF MODERN ART, et al.,

Plaintiffs,

V.

JULIUS H. SCHOEPS,

Defendant.

07 Civ. 11074 (JSR)

**NOTICE OF
MOTION TO DISMISS
COMPLAINT FOR
DECLARATORY RELIEF**

Facsimile: (202) 857-9799

David H. Pikus (DP-7846)

Kenneth M. Moltner (KM-7778)

David Smitham (DS-7778)

BRESSLER AMERY & ROSS, P.C.

17 State Street

New York, New York 10004

Telephone: (212) 425-9300

Facsimile: (212) 425-9337

Attorneys for Defendant Julius H. Schoeps

U.S.C. § 2201, the New York Estates, Powers, and Trusts Law (EPTL) § 11-3.2, the accompanying Declaration of John J. Byrne, Jr. and Memorandum of Points and Authorities, defendant Julius H. Schoeps (Schoeps) moves to dismiss the December 7, 2007 Complaint for Declaratory Relief, filed by plaintiffs the Museum of Modern Art (MoMA) and the Solomon R. Guggenheim Foundation (Guggenheim), on the grounds that plaintiffs have misused the declaratory judgment remedy to wrongfully position themselves as plaintiffs in an action that they should be defending, and that under a recently decided New York case, Schoeps v. The Andrew Lloyd Webber Art Foundation, Slip Op. 52183(U), 2007 WL 4098215 (N.Y. Sup., November 17, 2007), defendant Schoeps lacks both standing and the legal capacity to litigate the claims at issue, namely the ownership rights to artworks lost by his ancestor, Paul von Mendelssohn-Bartholdy, in Nazi Germany.

On January 4, 2008, this Court orally ordered that this motion to dismiss be served and filed on or before February 11, 2008; that plaintiffs' opposition papers be served and filed on or before February 25, 2008; and that reply papers be served and filed on or before February 29, 2008; and that oral argument to be held on March 5, 2008.

Dated: New York, New York
February 11, 2008

Respectfully submitted,



John J. Byrne, Jr. (JB 6687)
BYRNE GOLDENBERG & HAMILTON, PLLC
1025 Connecticut Avenue, N.W.
Suite 1012
Washington, D.C. 20036

Telephone: (202) 857-9775